IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2464 OF 2003

Brihanmumbai Municipal Corporation,
Mumbai. ... Petitioner

V/s

Mr. S.R. Mishra, Mumbai. ... Respondent

Mr. S.K. Talsania i/by Cr. Bayley & Co. for the petitioner.

CORAM: DR. D.Y. CHANDRACHUD, J.

DATED: 20TH JULY, 2006

ORAL JUDGMENT:

1. Rule, by consent of counsel returnable forthwith. By consent of counsel and at their request taken up for final hearing.

2. The respondent was employed as a Bus Driver in the BEST Undertaking on 15th February, 1992. On 30th May, 2000 he was assigned to drive Bus 5899 on Route 708 Ltd. between Bhayandar and Dindoshi Depot. When the bus which was driven by the Respondent reached Kashimira, it dashed against a cyclist who was riding a bicycle with his wife as a pillion rider. As a result, the cyclist

fell down and it was alleged that he was run over by the bus. The cyclist died on the spot and his wife received injuries. It is alleged that the respondent, despite the accident, did not stop the bus or report the accident to the police or to the Undertaking. Information about the accident was lodged by the wife of the cyclist and by members of the public to the police and an F.I.R. came to be lodged. The respondent and the conductor of the bus came to be chargesheeted on 29th June, 2000. The respondent was chargesheeted for misconduct under Standing Orders 20(j) and 20(k) of the Certified Standing Orders. The charge framed was of gross negligence in the discharge of duties. The driver was also chargesheeted under Standing Order 20(k) for his failure to report the accident to the management. The conductor was chargesheeted for breach of rules or regulations as he failed to report the accident to the management. A departmental enquiry was held and the respondent participated in the enquiry. The Enquiry officer, after examining the evidence, came to the conclusion that the charge under Standing Order 20(j) of gross negligence has been proved. Having regard to the unsatisfactory past record of the respondent, the Trying Officer came to the conclusion that he was not a fit person to be retained in the services of the

Undertaking. On 15.11.2000 the respondent was dismissed from service.

2. In the present case, in so far as the past record of the respondent is concerned, in para 3 of the petition several instances of unsatisfactory conduct and behaviour on the part of the respondent are given for which action has been taken in the past. Those can be extracted hereinbelow:

> "(A) On 14th July, 1992 he was cautioned for purposely delaying the bus and for being careless about duty.
>
> (B) On 27th January, 1993 an entry was made in his service record for coming late on duty.
>
> (C) On 25th May, 1994 he was censured for misconduct under Standing Order No.20(a).
>
> (D) On 30th May, 1995 he was again censured for misconduct under Standing Order No.20(a).
>
> (E) On 11th August, 1995 he was again censured for habitual absence and breach of rules under Standing Order Nos.20(f) & 20(K).
>
> (F) On 11th August, 1996 he was cautioned for bus brought before time.
>
> (G) On 17th August, 1996 he was cautioned for careless driving.
>
> (H) On 14th August, 1996 he was again cautioned for wasting time.
>
> (I) On 12th February, 1997 he was censured for misconduct under Standing Order No.20(j).
>
> (J) On 4th February, 1997 he was cautioned for misconduct under Standing Order No.20(k).

(K) On 16th June, 1997 he was cautioned under S.O. 20(j) for negligence in work.

(L) On 16th May, 1998 he was cautioned.

(M) On 12th July, 1998 he was suspended for one day for wasting time for misconduct under Standing Order No. 20(k).

The appeal against the order was rejected by order dated 31st August, 1998.

(N) On 1st November, 1998 he was again censured for misconduct under S.O.20(k).

(O) For the period from 27th April, 1999 to 18th May, 1999, he was suspended for misconduct under Standing Order No.20(f) i.e. habitual absence.

(P) On 12th July, 1998 he was suspended for one day for misconduct under Standing Order No. 20(k).

(Q) On 20th November, 1998 he was cautioned for bad driving.

(R) On 2nd November, 1998 he was again censured for misconduct under Standing Order No. 20(k).

(S) On 12th June, 2000 he was again censured for misconduct under Standing Order No.20(k).

(T) On 22nd July, 2000 he was cautioned for misconduct under S.O. 20(k).

Over and above the unsatisfactory record of his general conduct referred to above, the following are the entries in the records of accidents and collisions.

(A) On 23rd June, 1993 he was cautioned for collision with tempo No.MMH 11692.

(B) On 1st October, 1994 he was again cautioned for causing personal injuiry to passenger.

(C) On 29th January, 1999 he was again censured for collision with Taxi No. MRO 7247 at Parel village.

(D) On 4th October, 1997 he was suspended for one day for misconduct under S.O.20(j)."

3. The respondent filed an application before the Labour Court under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946. A Written statement was filed by the Undertaking. Since there was a challenge to the fairness of the enquiry, that issue was decided as a preliminary issue in the Part-I Award. On 5th August, 2002 the Labour Court came to the conclusion that the enquiry held against the respondent was fair and proper and that the findings of the Trying Officer were not perverse. Thereafter, the question of quantum of punishment came to be considered in the Part-II Award dated 23rd August, 2002. The Labour Court came to the conclusion that the punishment of dismissal was disproportionate to the misconduct proved and directed reinstatement of the respondent without back wages but with continuity of service. The Labour Court held that in imposing punishment on an erring employee an enlightened approach "informed with the demands of the situation and philosophy and the spirit of times" requires to be made. In these circumstances, the order of punishment was set aside. The order of the Labour

Court was confirmed in appeal by the Industrial Court on 29th November, 2002.

4. Counsel appearing on behalf of the petitioner submitted that the findings of the Labour Court in its Part-II Award dated 5th August, 2002 are ex-facie perverse. In the Part-I Award, the Labour Court had come to the conclusion that the enquiry was fair and proper and that the findings of the Enquiry Officer were not perverse. The misconduct is of a serious nature. In that view of the matter, the punishment of dismissal was justifiably imposed. The Labour Court having once held that the findings of the enquiry were not perverse, in its Part-I Award, was not justified in holding that the findings of the enquiry officer established not gross negligence but negligence, having regard to the fact that the cyclist had died on the spot and his wife received injuries caused by the respondent while driving the bus on duty.

5. There is merit in the submissions urged on behalf of the petitioner. The Labour Court in its Part-I Award came to the conclusion that the enquiry was fair and proper. The finding of misconduct was held to be not perverse. This is a case where admittedly the respondent

was on duty and was driving a bus which was assigned to him while on duty between Bhayander and Dindoshi. An accident took place in the course of which the cyclist died on the spot and his wife received severe injuries. The charge of gross negligence was held to be duly established in the course of the enquiry. The Labour Court held that the finding of the enquiry officer is not perverse. (That has been confirmed in the appeal filed before the Industrial Court). Despite this position, the Labour Court has reappreciated the evidence again in the Part-II Award. Once the enquiry was held to be fair and proper and the finding of misconduct was found not to be perverse, the only question that remained was whether the punishment of dismissal was disproportionate. However, in para 9 of the Part-II Award, the Labour Court holds thus:

> "From the evidence on record and circumstances which were considered by the Trying Officer, the facts through the report of the Trying Officer disclose that;
>
> (a) The trying officer did not concede (sic) the allegations made by the management/prosecution that, the bus bearing No. 5899 which was driven by the applicant

had given dash to the bycycle rider.

(b) That, to confuse the bycycle rider the passing of vehicle nearly and even air presses thereof was enough to confuse to imbalance to cyclist.(sic)"

The entire approach of the Labour Court is flawed. The Labour Court observed that the charge which has been established is of ngeligence and not of gross negligence. That this conclusion is palpably erroneous requires no detailed elaboration. The death was caused as a result of the conduct of the respondent as a bus driver; as a result of his omission to discharge the duty of care which he owed to the users of a public road. The Labour Court held that there was a case of negligence. Yet an order of reinstatement has been passed against the Undertaking. The Labour Court has held that there is widespread unemployment in the country and that the State does not provide special benefits like unemployment allowances to enable a discharged employee to sustain himself and his family. There can be no dispute about the principle that the conduct of disciplinary enquiries must be fair and proper. When the misconduct is established, the

punishment imposed must not be shockingly disproportionate. However, where a serious misconduct is proved to have been committed as a result of the acts of commission or omission on the part of an employee, it would be manifestly improper to interfere with the order of punishment on the erroneous ground that a lenient approach is called for. The Labour Court has lost sight of the fact that there is a society outside which is directly affected when drivers of a public transport Undertaking indulge in serious acts of misconduct causing death or bodily injury to the members of the public. The interest of the public is of paramount importance and this cannot be lost sight of by courts or tribunals constituted under industrial legislation.

6. The Industrial Court which heard a regular appeal under the Bombay Industrial Relations Act, 1946 against the order of the Labour Court has manifestly erred in declining to exercise its jurisdiction to correct a clear and patent error. The petition is accordingly allowed. The order of the Industrial Court dated 29th November, 2002 dismissing the appeal preferred by the Undertaking against the order of the Labour Court is accordingly set aside. The appeal preferred by the Undertaking being Appeal (IC) No. 86 of 2002 in

Application (BIR) No. 13 of 2001 is accordingly allowed.

7. Rule is made absolute in terms of prayer clause (b). In the circumstances of the case, there shall be no order as to costs.

.....